

VOL. XXXV.

HONOLULU, HAWAII TERRITORY, TUESDAY, MARCH 11, 1902.

PRICE FIVE CENTS.

## AUTHORITY QUESTIONED

### Did McKinley Give Dole Power to Appoint.

#### LEWIS SAYS "YES" M'CLANAHAN "NO"

Important Question as to Legality of Acts of Davis and Silliman Argued.

An interesting phase of the transition period muddle was argued yesterday in Supreme Court, upon the motion to set aside the judgment in the case of Geo. C. Hind et al. vs. Wilder Steamship Company. The principal point upon which the defendants based their motion was that the courts of the Territory which first passed upon it were without admiralty jurisdiction, or in fact, without jurisdiction of any kind. A direct attack was made upon the legality of any of the judicial acts of H. D. Silliman and George A. Davis, who were appointed by Governor Dole to temporarily fill a vacancy upon the illness of Judge Perry.

In his argument for the motion, Mr. McLanahan characterized Judge Davis and Judge Silliman as "mere judicial trespassers, without right or power of any kind." He contended that the Newlands resolution delegated to the President of the United States the power to appoint the judges, and that consequently Governor Dole at the time these appointments were made, was without the authority to do so. He said that there had been no delegation of the power by President McKinley and even had there been, it would have been of no effect, as Congress in express terms gave the authority to the President of the United States and he could not delegate it to any one else. He argued that the appointment was made under Act 67, passed July 7, 1898, by the legislature, which gave the President of the republic power to appoint temporarily, in the absence or disability of the judges, but the appointment of Davis and Silliman was.

in effect, the creation of a new court, and this was without legal authority, and contrary to the Hawaiian constitution, as the law referred only to the disability or absence of the Supreme Court Justice and not to the Circuit Judges. "Congress only had the power to create the office," concluded Mr. McLanahan, "and it delegated the power of appointment to the President of the United States, and he could not delegate it to the President of the Republic of Hawaii. Governor Dole did not act under this theory, but made the appointments by virtue of the act of 1898."

Mr. Lewis appearing for the plaintiff, replied that the defendant was barred from setting up this plea at this time, and that the judicial authority must needs be attacked at the original proceeding. By the appeal from the Supreme Court, he contended, the findings of that court had been accepted, and when the mandate was made, any further action was barred. He argued that if the judge was to be attacked it should have been at the original proceeding, and not at this time. He filed also an affidavit showing that Judge Perry had been ill with typhoid at the time of the appointment of Davis, and consequently the appointment was made because of this disability. He contended further that the Circuit Court had certain powers, probate, common law, admiralty, etc., but that these were not separate and distinct courts. Consequently Governor Dole did not create a new court by his appointment of Davis or Silliman, but that they had the same powers as did the judges in whose places they were acting.

Mr. Lewis construed the Newlands resolution differently from Mr. McLanahan, holding that certain powers were vested in the President of the United States until such time as he shall direct, and that this power was delegated to Governor Dole. In a communication from Secretary Day, in which it was said that these powers were "delegated to the officers of the Republic of Hawaii, according to the laws, as they existed just prior to annexation." Under this provision the appointment was made, subject of course, to the power of President McKinley to remove all officers, or fill any vacancy. He contended that it was clearly not the intention of Congress to leave Hawaii in a state of chaos, upon an office becoming vacant, until Washington, twenty days distant, could be communicated with, but that temporary power was vested in Governor Dole. Mr. Lewis asked also for further time to present some correspondence upon the matter, between the Executive Department at Washington and Governor Dole. He said that the matter was carefully considered in the Executive Council at the time, and the action taken was decided upon only after mature deliberation. Mr. McLanahan replied briefly, stating that the language of the Newlands resolution could not be construed as giving the President power to delegate the appointment of the judiciary to Governor Dole, but that such authority was vested only in the President of the United States. The argument was concluded at the adjournment of court, but Mr. Lewis is given until the close of the present term to file the official correspondence upon the subject. Briefs are to be submitted within five days after the close of the term.

**THE KAMALO CASE.**  
The Supreme Court yesterday placed the Kamalo case upon the calendar, but Justice Frear announced that the order was not final, and if desired arguments could be presented later, to strike it from the calendar.

**Hard Luck for a Boy.**  
A seven-year-old boy, barefoot and hatless, was found in the hallway of the Advertiser office Sunday night, where he was trying to sleep. He was crying when pulled out of a dark corner, and said he was afraid to go home because his mother would "lek" him for not selling more Buletins. On Wednesday he had been able to sell only two. The lad, who lives on Punch-bowl, was given something to eat and a soft place to lie on in the Advertiser's pressroom. The next morning he sold enough papers to secure him an entrance to his mother's domicile.

## AN AGGRIEVED STOCKHOLDER ON KONA DEVELOPMENTS

Editor Advertiser:—I, as one of the shareholders of the Kona Sugar Company, Limited, gratefully acknowledge the services of your valuable paper, as well as those of the "Star," in espousing our cause against an arrogant, merciless and tyrannical court, by bringing to bear in our favor the pressure of public opinion, thus compelling a vile foe to lose its grip and offer terms of peace.

Forced to surrender the court now tries to shirk the responsibility and wriggle out of the blame, and wants to make the press responsible for his action, but the public knows better, and judges him by his former attitude toward the sugar industry of the Territory, which, it is a well known fact, in conjunction with the defendant "Republican," has made him hunt cover, and as miscreant loves company, he now tries to ruin others.

Judge Humphreys says that he will not be dictated to by any man; that he is responsible for his actions to the powers that appointed him, and to his own conscience, but I seriously doubt that he is possessed of such a thing as a conscience, and therefore pity any one whose fate depends upon it.

He claims that he should have been the first one consulted on the Kona receivership matter, but knowing Judge Humphreys as we all do, I think there would have been a very fair chance for any one who should have attempted it to receive a sentence of a fine or imprisonment for contempt of court, or

## WILLIAM AULD WILL BE BURIED BY THE MASONS



THE LATE WILLIAM AULD.

All that is mortal of the late William Auld will be buried this afternoon at 3:30 from the Masonic Temple, with full Masonic honors, and behind the bier Masons, Knights of Pythias, Red Men, former comrades of the old Honolulu Rifle Company and the volunteer fire department, and government officials, will march to the cemetery. William Auld, whose death at 2:30 o'clock yesterday morning was reported in the Advertiser, had attained the full measure of honors in the secret societies to which he belonged, and from the monarchical government of Hawaii, in which he was an earnest believer to the time of his death.

Yesterday the body lay in state at the residence at Panaewa, Palama, and kahlis were waved over the body without cessation by Hawaiians, who willingly stood the trial of silence to show their esteem. The casket rested on a flower-wreathed bier, decked with masses of flowers. The face looked almost as natural as in life. Upon the breast were Masonic decorations and the decoration of the Order of Oceania, conferred by King Kalakaua. About the waist was his Masonic apron. A Masonic guard of honor remained at the residence last night. Governor Dole has ordered the Hawaiian Band to be present at the funeral this afternoon, and a squad of police will be in attendance.

The body will be taken from the residence today and placed in the hall of the Masonic Temple, where the full ritual of the order will be said. The pallbearers will be old and tried friends, with two representatives from the Board of Health, of which body he was a member at his death. The pall-

bearers are J. O. Carter, Senator D. Kalaupokalani, David Dayton, Clarence M. White and two members from the Board of Health. The offices of the Health Department were closed yesterday.

William Auld was born August 7, 1842, in Honolulu, where he resided all his life, mainly at Palama. He was trained as a carpenter, and worked with his father. He was afterwards a wheelwright, and then opened a butcher shop on Nuuanu street.

His first government position, under the monarchy, was as tax collector for Koolau and districts outside of Honolulu. Later he was appointed a clerk in the Waterworks Department, under King Kalakaua. The king commissioned him superintendent of the insane asylum November 15, 1886, which position he held until the overthrow of the monarchy in January, 1893, when he signed out of sympathy for Queen Liliuokalani and the royalist cause. His resignation came through his refusal to subscribe to the oath of allegiance to the provisional government. He remained in private life from January, 1893, until last spring, when the Hawaiian senate refused to confirm the governor's recess appointments to the Board of Health, and William Auld was selected as one of the new members.

Mr. Auld regularly attended the meetings until fall, when he began to fail in health, and thereafter was not often in attendance. During the political campaign of 1900, Mr. Auld was among the democratic candidates for the legislature, but failed of election.

Mr. Auld was the friend of the Hawaiians, and always was a steadfast adherent to the royalist cause. He was the personal and intimate friend of Queen Liliuokalani, by whom he was held in high esteem. Although enjoying 42 years of married life, he was never blessed with children of his own, but he often said that all children were his children. He was intensely fond of young people, and liberal in his attentions to them. His residence was always open to friends and strangers alike, and the hospitality of his home was proverbial. The residence has always been called Panaewa, meaning the place in Hawaii whence come the beautiful blossoms of the Lehua. He had just completed a new beach residence adjoining that of Queen Liliuokalani, at Waikiki.

He was a charter member of the Mechanics' Benefit Union, and also a charter member of the Mechanic Engine Company No. 2, of the old volunteer fire department, which had headquarters at the bell tower on Union street. He was also a member of the Knights of Pythias and Red Men.

It was as a thirty-second degree Mason, member of Lodge Le Progres, A. F. & A. M., and a charter member of Aloha Temple, Ancient Arabic Order Nobles of the Mystic Shrine, that William Auld was well known. He has always been greatly interested in secret societies, and has made his way upward to high degree by conscientious work and application. He was honored by his king who conferred upon him the much prized Order of Oceania.

During the reigns of Kamehameha IV and Lunalilo he was first Lieutenant of the Honolulu Rifles. During the reign of Lunalilo a mutiny occurred among the Household Guard, which was then occupying the old stone barracks, now used by the United States Army Quartermaster's Department. The men mutinied over the kind of poi being issued to them as rations, and defied the authority of the king to make them obey orders until new poi was given them. The attorney general sent a detachment to them that they come out of the barracks, but they shot the cannon and made ready to repel any attack. The Honolulu Rifles were called out. Among the volunteers who made ready to advance upon the doors was William Auld. However, the mutiny ended without the shedding of blood.

King Kalakaua appointed Mr. Auld high priest of the Hale Nana (House of Wisdom), instituted in 1886. He was

an authority on Hawaiian folklore, legends, history, customs, moles, traditions and the ancient religious rites of the Hawaiians, much of which he wrote in a book which cannot now be found. This also gave a history of his life.

When 18 years of age he married Mary Adams, daughter of Captain Adams, who is said to have been one of the designers of the Hawaiian flag. His wife survives him, also two sisters, Mrs. Mary Adams and Miss Auld, and a brother, James Auld, who many years ago was an owner of the Advertiser.

In the winter of 1897-98 William Auld, accompanied by D. Kalaupokalani, John Richardson and J. K. Kaula, went to Washington to protest against the annexation resolution which was then pending in Congress. The delegation went in the interest of Queen Liliuokalani. This was his first and only visit to the United States.

During his recent illness Mr. Auld said that when the rain and windstorm ceased he would pass to the beyond, and his prophecy was fulfilled.

## NO MORE FLAT RATES ALLOWED

Electric Light Co. Notifies Subscribers That Privilege is Withdrawn.

Those who have been enjoying the privilege of special flat rates from the Hawaiian Electric Co., Ltd., received in their mail on Saturday the following form of letter:

Dear Sir:—On and after March 15, it will be necessary for us to withdraw the flat rate of \$..... per month for current furnished you at ..... Our inspector reports you have the equivalent of ..... 16-c. p. lamps installed. The rate for the number of lights you have, based upon our flat rate schedule, copy of which we enclose, will be \$..... per month, which rate we extend to you from March 15th.

Should you wish to reduce the number of lights, or have a meter installed, kindly call at our office on King street and make application for such service as you may wish rendered. We believe that by a careful use of lights, service rendered by meter is the most economical for the consumer.

A case where a flat rate has been allowed at \$3.75 per month, extends the cost for the same number of fixtures to \$8.10, being the equivalent for eleven lamps. The rates as given in a leaflet, which was also sent out with the notices, are 90 cents each for the first five lights, and 60 cents each for all over that number. The company gives the user the privilege of making use of their rates in this manner or taking a meter. As the cost is increased to such an extent there will be a large number of disconnections made on account of the new order, and the sale of oil lamps will no doubt, be on the increase.

## WHOSE FAULT IS IT?

The world is full of disease and pain. Whose fault is it? Every body's; therefore often the fault of the sufferers themselves. But the pressing question is,—what to do, how to relieve, how to cure. What would become of us if means were not found to destroy disease? Why, then, of course, disease would destroy us and the world would be depopulated. Until we learn how to prevent disease, we must be thankful for the means of abating and curing it after it has seized upon us, and stands, like a savage with uplifted axe, ready to take our lives. Especially do we need some sure and speedy form of treatment for those complaints which are universal,—which arise in every country and climate. We allude to such ailments as Nervous and General Debility, Hysteria, Scrofula, Chronic Diarrhea, Asthma, Throat and Lung Complaints, Blood Impurities, and the ills of women and children. For these

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